

### **REMARKS**

This Amendment is responsive to the Office Action mailed on January 24, 2005. Claims 9, 13, and 15 are amended. Claims 1-22 are pending.

Claims 1-3, 6-7, 12-14, and 17-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bopardikar (US 6,052,739).

Claims 1, 11, 12, and 22 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Evain, "The Multi-Media Home Platform".

Claims 4-5 and 15-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Heiske (US 6,714,973).

Claims 8-10 and 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bopardikar in view of Evain.

Applicant respectfully traverses these rejections in view of the following comments.

#### **Discussion of Amended Claims**

Claims 9, 13, and 15 are amended to correct typographical errors therein.

#### **Discussion of Bopardikar**

Claims 1-3, 6-7, 12-14, and 17-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bopardikar. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Bopardikar does not meet the requirements for an anticipation rejection.

Bopardikar discloses a computer system having an object-oriented operating system. Software stored in memory 14 is logically arranged in a series of layers. An upper layer 32 is platform independent, written in a manner that it may be used with any platform, based on any CPU, either existing or to be developed in the future, without modification. A second layer of software 34 is platform dependent, and must be customized for the particular platform of

computer system 10 (Col. 3, lines 40-52).

The Examiner has apparently misconstrued Applicant's invention as being directed primarily to providing platform independence for software applications. "Platform independence" means only that a software application can run independent of the type of operating system used, as discussed in Bopardikar (Col. 3, lines 40-50). With Applicant's claimed invention, the layered software architecture allows configuration of a functionality of the application layer and the middleware layer independently of the operating system layer and the hardware layer. In other words, Applicant's invention, while allowing for platform independence, is directed towards configuration of the functionality of the application layer and the software layer, and not merely providing a platform independent layer for a software application as apparently assumed by the Examiner.

There are many ways to achieve platform independence. Bopardikar discloses one way to achieve platform independence. Platform independence does not imply that a functionality of the application layer and the middleware layer can be configured independently of the operating system layer and the hardware layer, as set forth in Applicant's claim 1 and 12.

Accordingly, Bopardikar does not disclose or remotely suggest a layered software architecture that allows configuration of a functionality of the application layer and the middleware layer independently of the operating system layer and the hardware layer, as claimed by Applicant.

As Bopardikar does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(e) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc.*, *supra*.

#### Discussion of Evain

Claims 1, 11, 12, and 22 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Evain. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Evain does not meet

the requirements for an anticipation rejection.

Evain does disclose a layered software architecture. However, layered software on set-top terminals existed before Evain. The present invention is directed towards a particular kind of layering and interaction which Evain did not anticipate. The assignee of the present invention, General Instrument Corporation, participated in the Multimedia Home Platform (MHP) development process, and several of General Instrument's API's were included in the MHP specifications. However, the Evain article is merely an early overview of the MHP, and provides only a preliminary wish list of functionality with no solutions.

The present invention, on the other hand, provides a solution to the problem of how to provide a set top box that can evolve to provide new functionality as technology improves. Evain simply does not disclose or remotely suggest a layered software architecture that allows configuration of a functionality of the application layer and the middleware layer independently of the operating system layer and the hardware layer. Accordingly, Evain, like Bopardikar above, does not address the problem of how to provide new functionality in a set top box as technology evolves.

Evain discusses "platform independence" for different software applications, but does not discuss any configuration of the application layer and the middleware layer independently of the operating system layer and the hardware layer as claimed by Applicant. As discussed above in connection with Bopardikar, "platform independence" means only that a software application can run independent of the type of operating system used, and there are many ways to achieve platform independence. Platform independence does not imply that a functionality of the application layer and the middleware layer can be configured independently of the operating system layer and the hardware layer.

Providing platform independence is not the same as allowing configuration of a functionality of the application layer and the middleware layer independently of the operating system layer and the hardware layer. There is no disclosure or suggestion in Evain or in Bopardikar of an application layer or a middleware layer that can be configured independently of the operating system layer and the hardware layer. In other words, Applicant's claims are not concerned with platform independence for software applications which run on the application

layer as apparently assumed by the Examiner, but rather with configurability of the application layer and the middleware layer without the need to change or modify the operating system or the hardware.

Evain does not disclose or remotely suggest that the layered software architecture allows configuration of a functionality of the application layer and the middleware layer, independently of the operating system layer and the hardware layer, as set forth in Applicant's claims 1 and 12.

As Evain does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(a) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of either Bopardikar or Evain, taken alone or in combination with each other of any of the other prior art of record.

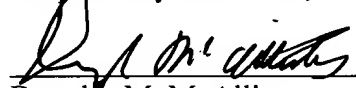
Further remarks regarding the asserted relationship between Applicant's claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(e), 35 U.S.C. § 102(a), and 35 U.S.C. § 103(a) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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